

SECTION 1. PURPOSE

The purpose of the revenue procedure is to describe situations that involve the computation of the 15-month period for notification under section 1.508-1(a)(2)(i) of the Income Tax Regulations where an organization makes nonsubstantive amendments to its governing instrument.

SEC. 2. BACKGROUND

01. Section 501(c)(3) of the Internal Revenue Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable purposes. Section 1.501(c)(3)-1(a)(1) of the regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt. The organizational test is set forth in section 1.501(c)(3)-1(b).

02. Section 508(a) of the Code provides, with certain exceptions, that an organization organized after October 9, 1969, shall not be treated as an organization described in section 501(c)(3) unless, within the time prescribed in the regulations, it gives notice that it is applying for recognition of exempt status. Section 1.508-1(a)(2)(i) of the regulations provides that notice must be given 15 months from the end of the month in which the organization was organized. Notice is given by submitting a properly completed and executed Form 1023, Application for Recognition of Exemption, to the appropriate key District Director. Section 1.508-1(a)(2)(iii) provides that an organization shall be considered "organized" on the date it becomes an organization described in section 501(c)(3) (determined without regard to section 508(a)). Section 508(c) and section 1.508-1(a)(3) describe organizations such as churches, that are not subject to section 508(a) notice requirements.

.03 Section 13.01 of Rev. Proc. 84-46, page 31, this Bulletin, provides that a ruling or determination letter recognizing exemption is usually effective as of the date of formation of an organization if its purposes and activities during the period prior to the date of the ruling or determination letter were consistent with the requirements for exemption. If an organization is required to alter its activities or to make substantive amendments to its enabling instrument, the ruling or determination letter recognizing its exempt status will be effective as of the date the changes are made. It is the administrative practice of the Service to recognize exemption from the date of formation in situations where nonsubstantive amendments to an enabling document are subsequently made. For an example of a nonsubstantive change, see section 13.01, Rev. Proc. 84-46, page 31. Where only a nonsubstantive amendment is made, for purposes of the notice requirement of section 1.508-1(a)(2)(i), the organization will be considered organized, within the meaning of section 1.508-1(a)(2)(iii), on the date it is organized under appropriate state law. See Rev.Rul. 75-290, 1975-2 C.B. 215.

SEC. 3. APPLICATION.

.01 The following examples illustrate the effective date for recognition of exemption under section 501(c)(3) of the Code where a nonsubstantive governing instrument amendment is made. To clarify its satisfaction of the organizational test, the applicant adds a specific dissolution clause to its governing instrument insuring preservation of its assets for charitable purposes. All examples assume that the organizations have otherwise complied with the requirements of section 501(c)(3) since their incorporation. All examples also assume that the organizations are not described in section 508(c).

1. An organization submits an application within 15 months from the end of the month in which it was organized. At the request of the Service, it makes a nonsubstantive amendment to its enabling instrument. Under these circumstances, the organization's exemption will be effective as of its date of incorporation because it filed notice within 15 months from the date it was deemed "organized" for section 501(c)(3) purposes.

2. An organization submits an application more than 15 months from the end of the month in which it was organized. The Service requests a nonsubstantive amendment to its enabling instrument and the amendment is made three months subsequent to the submission of an application for exemption. Under the circumstances, the organization will be recognized as exempt under section 501(c)(3) on the date it submitted its application, even though the amendatory action was completed later.

3. Two years after it was organized, an organization makes a nonsubstantive amendment to its enabling instrument. Within 15 months after the date of the amendment, the organization applies for exemption. Under these circumstances, the organization will be recognized as exempt effective as of the date it sent an application to the Service because it failed to file notice within 15 months from the end of the month in which it was organized under applicable state law.

02. The principles set forth in the three situations in 01. above are equally applicable to corporations, trusts, and unincorporated associations.

SEC. 4. EFFECT ON OTHER REVENUE PROCEDURES

Section 13.01 of Rev. Proc. 84-46 is amplified.

APPLICATIONS FOR EXTENSIONS OF THE TIME FOR FILING NOTICE UNDER SECTION 508(a)

The Service will give consideration to applying the Commissioner's discretionary authority under section 1.9100-1 of the regulations to extend the time for satisfying the notice requirement of section 508(a) of the Code.

Under section 1.9100-1 of the regulations the Commissioner has discretion, upon

a showing of good cause by a taxpayer, to grant a reasonable extension of the time fixed by the regulations for making an election or application for relief in respect of tax under subtitle A of the Internal Revenue Code, provided:

(1) the time for making the election or application is not expressly prescribed by the statute;

(2) the request for the extension is filed with the Commissioner within a period of time the Commissioner considers reasonable under the circumstances; and

(3) it is shown to the Commissioner's satisfaction that granting the extension will not jeopardize the Government's interests.

Rev. Proc. 79-63, 1979-2 C.B. 578, sets forth information and representations that must be furnished by the taxpayer and some factors that will be taken into consideration in determining whether such extensions will be granted.